

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 17 2006

MICHAEL A. LAKE,

Plaintiff - Appellant,

v.

PHILLIP FOSTER; et al.,

Defendants - Appellees.

No. 05-35143

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CV-01-00139-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Michael A. Lake, an Idaho state prisoner, appeals pro se from the district court's judgment dismissing his action alleging that prison officials stopped him from operating a model-building business within the prison. We have jurisdiction

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review for abuse of discretion the district court's dismissal as a sanction for failure to comply with court order. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004). We affirm in part, vacate in part, and remand.

The district court did not abuse its discretion by dismissing Lake's RICO and property deprivation claims with prejudice, after warning Lake that including these claims in his third amended complaint would lead to sanctions. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The district court abused its discretion, however, by dismissing the entire action rather than striking the two offending claims.

The district court incorrectly concluded that Lake failed to set forth allegations to support his retaliation claim, where Lake alleged that he was transferred and placed into administrative segregation and his property confiscated after he confronted the Warden about accepting bribes. *See id.*; *see also Rizzo v. Dawson*, 778 F.3d 527, 532 (9th Cir. 1985).

Lake's remaining contentions are without merit.

Consequently, we vacate the dismissal of the retaliation claim and remand for further proceedings as to that claim. We affirm the dismissal of the remaining claims.

The parties shall bear their own costs on appeal.

AFFIRMED in part; VACATED in part and REMANDED.